IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 446 of 2001

WITH

CIVIL APPLICATION NO. 12162 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PREKSHA INFRASTRUCTURE LTD.

Versus

ASHOKBHAI J SHAH

Appearance:

1. Appeal from Order No. 446 of 2001

MR MAULIN R RAVAL for Petitioner No. 1

..... for Respondents No. 1-9, 11-13

MR HARIN P RAVAL for Respondents No. 10

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision:28/12/2001

C.A.V.JUDGEMENT

1. Heard learned advocates for the parties. With

the consent of Learned Advocates on record, the present appeal is taken up for final hearing.

2. Being dissatisfied with the order passed by the learned City Civil Judge, Court No. 8, Ahmedabad, below Exh. 5 & 6, in Civil Suit No. 4222 of 1999, the appellant/original plaintiff has filed the present appeal from order under Sec. 104 read with Order 43(i)(r) of the C.P.C.

3. The facts of the appeal in nutshell are as under:-
The appellant in this appeal is an authorised person of M/s. Preksha Infrastructure Ltd. The plaintiff appears to be a Limited company registered under the Companies Act, 1956, and Mr. Surendra A. Shah authorised person on behalf of the appellant company who filed the suit. The appellant/ original plaintiff, at the instance of the respondent Nos. 1 to 9, purchased shares of 5 lacs of respondent no.10's Company, which came with a public issue on 16/10/1995, with equity shares of Rs.10/- each at the premium of Rs.10/- per share. It is the say of the appellant that, the respondent No.1 is a brother of Shri Kalyan J. Shah who is a director of defendant No.13, Bank. At the instance of respondent No.1 Ashok Shah, and Kalyan Shah and the promises given in presence of Shri Dhanpal Shah, Pradeep Shah and Vipul Raja, the appellant/original plaintiff purchased 5 lacs shares from market in the names suggested by them, as shown in para 3 of the plaint.

4. As the respondents/original defendants have failed to fulfill the commitment and also failed to make the payment to the appellant, the appellant/original plaintiff sold 5 lacs shares in market at the prevailing rate i.e. at the rate of Rs.8/- per share. The defendants/original respondents are in collusion and with an ulterior motive to avoid the payment to the appellant in order to make the public issue of Rs.110 lacs successful of the respondent No10's company, in collusion and with ulterior motive trying to avoid the payment and thereby they wanted to defraud the public at large and the present appellant in particular. The appellant filed a complaint before the Navarangpura Police Station, Ahmedabad and also before the Ahmedabad District Grahak Suraksha Sangh as the notices were also sent to the defendant no.10. Further various complaints were also lodged against the respondent no. 10 and 13 as they being directors of the Company. Notices were also sent to respondent nos. 1 to 13, by the appellant company. However, the respondent failed to comply the same.

Ultimately, the appellant filed the Summary Suit under Order 37 of the C.P.C. to recover total amount of Rs. 1 crore with interest and cost and also took out the notice of motion and accordingly sought for temporary injunction against the present defendants as per the prayer clause-13(A) to 13(E) and also prayed in clause 13(F) and 13(G) for the appointment of the Court Commissioner.

5. From the papers it appears that, the learned Trial Court had granted ad-interim relief in terms of para 13(C) and 13(D) for limited time and also granted prayer 13F whereas, issued notice for prayer in para 13a, b, b(I), e and g. It is the case of the appellant/original plaintiff that, the notice of motion was heard at length by the City Civil Court No.8, Ahmedabad, who was pleased to reject the notice of motion vide order dt. 5.10.2001, thereupon, the appellant/original plaintiff has filed the present Appeal from Order. It was necessary to see that, the papers which were produced in trial court, I call for the R & P of civil Suit No. 4222/99.

6. At the time of hearing of this appeal, learned advocate Mr. Maulin Raval, for the appellant/original plaintiff submitted that it is not in dispute that the respondent No.1 to 9 are related to each other or the company. By showing annexure `A' to `I' Mr. Maulin Raval, LA for the appellant submits that, the appellant is a company dealing in the business of purchasing/selling in shares. There are various accounts of the respondent Nos. 1 to 9 regularly maintained by the appellant company wherein, the transaction in question is shown against each person/firm/company. Therefore, the argument advanced by LA Mr. N.D. Nanavati for Mr. Harin Raval, for the respondents that there is nothing on record to show that from whom the shares were purchased and to whom it is sold has not merit.

7. Shri Raval LA for the appellant places reliance on notice addressed to the present respondent Nos. 1 to 8 as well as the Nutan Nagrik Sahakari Bank, Shri Dhanpal Shah and Shri Vipul Raja, and submitted that pursuant to the said notice, Shri Ashok J. Shah for the Santram Spinners Ltd. wrote a letter on 29.11.1996, interalia praying for sometime and further requested not to take any strict steps against them. Under the circumstances, it is also submitted by Mr. Raval LA for the appellant that, each of the respondents admitted the contents of the notice and respondent No.1, Ashok J. Shah had also admitted and requested to undertake all necessary steps

vide reply given on behalf of Santram Spinners Ltd.

8. According to Mr. Raval, LA for the appellant, the Trial Court has erred in considering and thereafter rejecting the letter produced at exh. 3/3 which is written on behalf of Santram Spinners Ltd. without going into trial of the case. The Ld. Trial Court has erred in coming to the conclusion that unless the matter goes for trial, the authenticity of such letter cannot be decided. Ld. Trial Court has also erred in coming to the conclusion that, as there is no ascertain sum of money or liquidated damage no summary suit under Order 37 can be filed. Ld. Trial Court has also failed to appreciate the fact that, at the time of hearing of the notice of motion, it has to consider primafacie case, the balance of convenience and irreparable injuries caused to the plaintiff/appellants who comes before it and at that time, it is not required to go into details. The Trial Court has also erred in not deciding and coming to the conclusion that the letter produced at mark 3/3 is written by Shri Ashok Shah brother of the Chairman of the Company in question and also the Executive Director of the said company. The Trial Court has erred in coming to the conclusion that, the letter produced at exh. 3/3, clearly amounts to an existing contract between the parties. The Ld. Trial Court has to consider the injuries that has been caused to the present appellant/original plaintiff and further at the instance of respondent No.1, the appellant has purchased Rs.10/share of respondent No.10 company, at a premium of Rs.10/- per share, i.e. Rs.20/- per share on 23.3.1996 and it was sold on 25.3.1996 at the prevailing rate of Rs.8/- per share on account of non acceptance by the respondent Nos. 1 to 9. The Trial Court has failed to appreciate that the appellant/original plaintiff is facing the litigation of M/s. Vrushti Finance Ltd. who has also filed complaint U/s. 138 of the Negotiable Instruments Act, against the present appellant/original plaintiff. Lastly it was urged by Mr. Raval LA for appellant that there are many suits, cross complaints filed and pending against the present appellant and respondents respectively. It was also urged by Mr. Raval, LA for the appellant/original plaintiff that when the appellant filed the suit for a claim of Rs. 1 crore, the Ld. Trial Court has failed to appreciate that, the primafacie case and the balance of convenience or irreparable injuries that will be suffered by the present appellant, if the interim relief is not granted. Therefore, the Ld. Advocate Mr. Raval, submitted that, the injunction which was granted earlier against the present respondents/original defendants be restored and

so far as the notice issued for as per prayer 13a to e, be granted so as to see that, in case of decree passed in favour of the appellant/original plaintiff the due amount can be recovered from the said properties. Shri Raval Ld. Advocate for the appellant places reliance on a case of Rajnibala @ Mannubai Vs. Kamladevi and Ors. reported in AIR 1996 SC 1946 and submitted that in a suit for declaration of title simpliciter, court has power U/s. 39 Rule 1 & 2 or U/s. 151 of the CP Code, to grant ad-interim injunction pending the suit and thereby, court has got inherent powers to protect the rights while pending the suit.

9. Shri Maulin Raval, LA for the appellant, also relies upon the case of Management of Bangalore Woolen Cotton & Silk Mills Co. Ltd. Vs. B. Dasappa, M.T. represented by Binny Mills Labour Association reported in 1960 AIR SC page 1352 and submitted that a primafacie case does not mean a case to proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed.

10. Shri Maulin Raval, LA for the appellant also placed reliance on the case of Gujarat Bottling Co. Ltd., and Ors. Vs. Coca Cola Co. & Ors. reported in (1995) 5 SCC 545 and submitted that the grant of interlocutory injunction during the pendency of any legal proceedings, is a matter requiring the exercise of discretion of the court depending upon the decision whether or not to grant any interlocutory injunction has to be taken at the time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The Court must weigh one need against another and determined where the balance of convenience lies. Under Order 39 Rule 2 of the Code of Civil Procedure, jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and therefore, the Court on being approached will apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court and under the circumstances, the Court may refuse to interfere unless, his conduct is free from blame. The party invoking jurisdiction of the Court has to show that, he himself was not at fault or was not responsible for the things complained of and that he was not unfair or unequitable while dealings with the party. Such consideration will arise not only in respect of the respondent No.6, who seeks order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of

the party approaching the Court for vacating the order granted in the final proceedings.

11. From the aforesaid submission, the authority relied upon by Mr. Maulin Raval, LA for the appellant, he vehemently submitted that it is a fit case wherein, the injunction as prayed for should be granted failing which, there is a likelihood that the defendant may transfer the property in question and thereby, defeat the likelihood of decree passed in favour of the plaintiff.

12. Against the aforesaid submission, Mr. N.D. Nanavati, Learned Counsel for Mr. Harin P. Raval, LA for the respondents submitted that, from whom the shares in question were purchased by the plaintiff and thereafter sold is not shown on record. The plaintiff purchased the shares today and sold the same after two-three days, and thereby, incurred a loss of 60 lacs, when the rate of each shares goes down to Rs.8/- in the open market on 23.3.1996. It may be noted that the plaintiff has purchased 5 lacs shares from the market, each at the rate of Rs.20/- on 23.3.1996 and the said shares were also sold in the open market, at the rate of Rs.8/- per share. Such an act of purchasing and selling shares is done by the plaintiff at his own sweet will and not at the instance of either of the respondent Nos. 1 to 9 or Mr. Kalyan J. Shah brother of the respondent No.1. In none of the documents produced on record before the Trial Court, there are numbers of shares are mentioned/specified or any other information which will lead to conclude that, the plaintiff had purchased the share in the name of respondent No.1 to 9. Accordingly, there is no any relationship or contract between the plaintiff and the respondents herein. Mr. Nanavati, learned counsel for the respondents, submits that, after the notice, dt. 22.11.1996, it is averred that, on behalf of the defendant No. 10 Santaram Spinners Ltd. on whose behalf, the share were purchased from the market, gave reply on 29.11.1996. The said letter was written by Shri Ashok J. Shah, respondent No.1, herein. The said alleged letter is not admitted by the respondents herein. A copy of the said letter is produced on record of the trial Court at mark 3/3 which is in dispute. Mr. Nanavati, learned Counsel submits that the alleged notice dt. 22.11.1996, shows that only 8 persons/company for whom the alleged shares were purchased whereas in the suit, notice of motion, which is under challenge, names of 9 persons are mentioned. Therefore, primafacie the appellant has not come with clean hand before this Court. The principle laid down in the judgment of the Gujarat Bottling Co. Ltd. (Supra)

page 545, on the contrary there are more ground in favour of the present respondents in vacating the ad-interim or temporary injunction order granted earlier in the pending suit or proceedings.

13. Mr. Nanavati, learned counsel for the respondent, further submits that, when the alleged shares were sold by the present appellant/original plaintiff on 25.3.1996, and that the notice dt. 22.11.1996, were served on the present respondents there was no need for the appellant to remain silent for almost 3 years and file the present suit and notice of motion, just before expiry of the limitation period by filing the suit and notice of motion on 25.8.99, no appropriate delay in filing the suit is explained and therefore, also, neither the primafacie case or balance of convenience or irreparable injuries is proved to be infavour of the plaintiff. Mr. Nanavati, further submits that, merely by filing complaint or suit or writ petition between the appellants-respondents, or between the appellants after a lapse of 3 years, for the alleged amount, would not tilt balance of convenience in favour of the present appellant.

14. Mr. Nanavati, also relies on the definition of `Contract' and definition of `Security' as given in Sec. 2(a)& (h) of Secs. 13 and 16 of the Security's Contract (Regulation) Act, 1956 and submitted that having regards to the nature of the volumes of transactions, in security by notification declared under Secs. 13 and 16 to comply such state or area and thereupon any contract, entered into after deemed date of notification, otherwise, then between the members will be illegal. Relying on Secs. 13 and 16 of the Act, Mr. Nanavati, learned Counsel for the respondent submits that looking to the nature or volumes of transaction i.e. to say, transaction of 5 lacs of shares, there is nothing on record to show that the present appellant/original plaintiff entered into the contract for purchase or sale of security from the members of stock exchange and accordingly the said transaction said to be illegal. Further relying upon the aforesaid sec. Mr. Nanavati, learned counsel for the respondent submits that, there is nothing on record to show that the contract for purchase or sale of securities is produced on record therefore, also, the said transaction is void and illegal between the parties.

15. In view of the aforesaid circumstances, and the submissions made by the learned counsel for the respondent, there is no illegality, perverseness or any lacuna by which this court is required to interfere with

the order passed by the Learned Trial Court. The order passed by the Trial Court is perfect considering all aspect while rejecting the notice of motion. Therefore, it is not necessary to continue any order of injunction till disposal of the suit.

15(a). I have gone through the record and proceedings of the Trial Court in summary Suit No. 4222 of 1999 and I have also perused the authority relied upon by the learned advocate Mr. Maulin Raval for the appellant. So far as the principle laid down is concerned, there cannot be two opinion for the same. However, we have to consider the position that would be in the facts and circumstances of the present case, before this Court. Now, if we peruse the notice of motion, para 3 on page 4 the following lines are required to be considered.

> "The plaintiff hereinabove, was highly impressed by the declaration made in prospectus of the company and was lured and at the relevant time, Shri Ashok J. Shah and Shri Kalyan J. Shah, respondent Nos. 1 and 10, assured the plaintiff for the proposal on procurement of 5 lacs shares of respondent No.10 company and in presence of Shri Dhanpal..... respondent Nos. 1 to 9."

While reading the aforesaid lines, it appears that there is nothing on record to show that the respondents Nos. 1 to 9 had told the appellant to purchase the shares on their behalf and that, relying upon the declaration made in the prospectus, the appellant lured to go in for purchase of shares. The definition (a) of Sec. 2 of the Securities Contract (Regulation) Act, 1956, speaks about `Contract'. `Contract' means, the contract relating to all purchase or sale of securities. There is nothing on record to show that, is there any contract between the appellant and the respondent nos. 1 to 9 ? Answer is in negative. Reference is deserved to be made to xerox copy of the high/low rates of the stock exchange, Ahmedabad, which is placed at mark 3/14 in the record of the trial court. So far as the highest price of shares of Santram Spinners Ltd. between 8.12.1995 to 14.12.1995, was Rs.22.50 and lowest was Rs.16/-. In the said chart the rate of each share on 1.3.1996 to 8.3.1996, was maximum Rs. 10/- and minimum Rs. 6/- is shown. Therefore, it can be presumed that on 23.3.1996, the maximum share price of Santram Spinners Ltd. was Rs.10/- and minimum Rs.6/-. Under what circumstances, and at whose instance, the appellant /original plaintiff purchased the shares of Rs.10/- each at the premium of

Rs.10/-. It is not the case of the appellant/plaintiff that, though the prices of the shares of Santaram Spinners Ltd. was Rs.10/maximum and Rs.10/minimum. For the first week of March 1996, the price of the shares was shoot up and that the appellant was directed to purchase the shares at the high rate. It is also not on record to show that the present appellant/original plaintiff, which was formerly known as Preksha Spinning Infrastructures Pvt. Ltd. is having card to do business with the Stock Exchange or with the Vrushty Finance Ltd. Therefore, also, the trial court, has not erred to conclude that the appellant has good case to grant ad-interim injunction.

16. In short, I am of the opinion that, there is no violation of any procedure much less, the perverseness or irregularity in Trial Court's order for continuing the ad-interim injunction granted earlier by the Trial Court dt. 26.8.99 and which has been vacated by the Trial Court by passing order on 5.10.2001.

17. Learned Trial Court Judge is hereby, directed, without being influenced by the order passed by this Court, the Trial Court to try the suit expeditiously depending upon the work load of the City Civil Court, Ahmedabad. Therefore, accordingly, present Appeal from order is dismissed with no order as to costs. In view of the order passed in appeal from order, CA shall stand disposed of accordingly. Rule discharged.

[SHARAD D. DAVE, J]

snt./

After declaring the order, Mr.Moulin Raval L.A. for the appellant submits that the appellant might go to the higher forum and therefore the order passed by this court be stayed for 10 weeks. Mr.Harin Raval L.A. for the respondents objects for continuation in interim relief granted earlier. I am of the opinion that 5 weeks time is sufficient to approach the higher forum. This order be stayed till 8.2.02.

(SHARAD D DAVE, J)